IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4050 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

MR.P C KASHYAP

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 4050 of 2002

MR KAMLESHWAR SINGH for Petitioner No. 1-3

MR SJ DAVE APP for Respondent No. 1

MR CB DASTOOR for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 10/04/2003

C.A.V. JUDGEMENT

1. By this petition filed on 3.7.2002 under section 482 of the Code of Criminal Procedure, the petitioners have prayed to quash the complaint of respondent No.2 which was registered as Inquiry Case No.21 of 2002 in the Court of the learned Metropolitan Magistrate, Ahmedabad as also to stay the further proceedings, including the inquiry under section 156 (3) of the Cr.P.C. ordered on 18.2.2002. By virtue of that order, the report of the inquiry was required to be sent to the Court by the P.S.O. within 30 days. It is not clear as to whether such inquiry was conducted and completed and whether such report was sent even as the ex-parte interim relief injuncting the inquiry was obtained in this case on 5.7.2002.

2. The complaint of respondent No 2 against the petitioners, who are husband and wife and their son, disclosed the offences punishable under sections 406, 420, 384, 294 (b), 506 (2) read with section 120-B of the Indian Penal Code and section 135 (1) of the Bombay Police Act. It is alleged in the said complaint that, when the construction of building as agreed by the contract among the parties was completed, the petitioners failed to make the final payment of Rs.1,61,916/- which remained due and did not return the material and implements worth Rs.30,000/- left at the site of the petitioners and, when the account was sought to be settled, the petitioners threatened the complainant while petitioner No.3 even issued threats to the life of the complainant by showing a knife. Such being the complaint in substance, the complainant also prayed for investigation through police and also submitted a list of witnesses in the complaint. The learned Metropolitan Magistrate made the aforesaid order below such complaint after briefly recording his reasons.

3. The learned counsel for the petitioners submitted that the complaint was vague and absurd and at the most disclosed a transaction of purely civil nature since the complaint was filed after exchange of notices wherein only a claim of the outstanding amount was made and refuted. He, therefore, submitted that the complaint was filed and the allegations were made only with a view to pressurizing the petitioners by abusing the process of court. It was also submitted that the complainant was in fact paid on 5.1.2000 the remaining amount of Rs.1,61,000/- in cash along with the last payment of Rs.50,000/- by cheque and, in support of such contention, a copy of the petitioner's own diary was produced in which the details of the cheque of Rs.50,000/- with signature of the complainant appeared with the addition

of the words "and cash Rs.1,61,000/-". The learned counsel insisted that the outstanding amount having been paid in cash which the complainant did not want to account for, no receipt was issued for such amount. Thus, in short, there is no dispute about the fact that when the last of the payment by cheque was made by the petitioners, a total sum of Rs.1,61,916/- was due and payable and the dispute was as to whether that amount reduced by Rs.916/- was paid in cash or not. The complaint discloses specific details about how the remaining payment was denied, the building materials and implements were withheld and the complainant was threatened. Although it is a subject-matter of inquiry and investigation, the version of the petitioners appears to be supported at this stage only by their own words and the documents in which the words "and cash Rs.1,61,000/-" above the signature of the complainant are added, which addition by itself may also constitute an offence.

4. The learned counsel for the petitioners relied upon the principles laid down in the case of BAJANLAL [AIR 1992 SC 604] and the judgment of this Court in B. RAMESH v. STATE OF GUJARAT [1997 (2) G.L.R. 1655] wherein the complaint was quashed upon the finding that criminal action was being used as a lever to knock out the outstanding dues when the case was exclusively of civil nature. It was observed in that case that before issuing the process, the Magistrate must apply his mind as to whether the complaint prima facie disclosed an offence and it is the duty of the Court to see that innocent persons of the society are not mechanically and unnecessarily dragged into the Court and harassed by some scheming complainants abusing the process of the court. A bare reading of the complaint in that case indicated it to be absurd, vague improbable and malicious. The learned counsel also relied upon the judgment of the Allahabad High Court in HEM RAJ MITTAL v. STATE OF U.P. [2000(106) Cr.L.J. 561 (All.)] wherein the F.I.R. was quashed since allegations of attempt to commit murder by pressing neck were not corroborated by any medical evidence and the F.I.R. was found to have been filed with ulterior motive to wreak vengeance and to pressurize a party for compromise on the terms of the complainant. The judgment of the Supreme Court in S.N.PALANITKAR v. STATE OF BIHAR [AIR 2001 SC 2960] was also relied upon for the proposition that entrustment of some property of the complainant to the accused, which was converted to his own use, was necessary to satisfy the ingredients of section 405 and, in case of cheating, the intention to deceive had to be in existence at the time when inducement was made. Mere failure to keep up promise

subsequently cannot be presumed to be leading to cheating. It is, however, also clarified in the same judgment in the case of complaint under section 200 of the Cr.P.C. that the Magistrate can take cognizance of the offence after examining the complainant and his witnesses, if any, to ascertain whether a prima facie case was made out against the accused to issue process. The words "sufficient ground" used in section 202 have to be construed to mean the satisfaction that a prima facie case was made out against the accused and not sufficient ground for the purpose of conviction.

5. The learned counsel for the complainant submitted that specific allegations with day and time and the details of the transaction and the incident were made by the complainant which were neither vague nor absurd at least as far as the accused Nos.1 and 3, who are petitioners Nos.1 and 3 herein, were concerned. He fairly conceded that in absence of any specific allegation against the original accused No.2, the petitioner No.2 herein, the complaint and the criminal proceeding against petitioner No.2 may be quashed and the petition may be allowed to that extent. The learned counsel relied upon the judgment of the Supreme Court in RAJESH BAJAJ v. STATE NCT OF DELHI [(199) 3 SCC 259] wherein it is held that, if averments in complaint prima facie made out a case for investigation, the High Court cannot quash the complaint merely because one or two ingredients of the offence have not been stated in detail. It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint, the Court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an F.I.R. (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence. It is also observed that quashing of complaint on the ground that the complaint disclosed commercial or money transactions was not justified since many a cheating is committed in the course of commercial or money transactions. The judgment in MEDCHL CHEMICALS

& PHARMA (P) LTD. v. BIOLOGICAL P. LTD. [2000 SCC (Cri.) 615] was relied upon for the proposition that, for the purpose of quashing of a complaint, it has to be examined as a whole without going into merits of the allegations made therein and, if a prima facie case was made out disclosing the ingredients of the offence alleged against the accused, the Court should not quash the complaint. Mere fact that the offence was committed during the course of a commercial transaction by itself is not sufficient to quash the complaint. The Court has to see whether on the fact situation 'civic profile' outweighs the 'criminal outfit'. The learned counsel relied upon the recent judgment of the Supreme Court in M. KRISHNAN v. VIJAY SINGH [(2001) 8 SCC 645] wherein it is held that where factual foundations for the offence were laid down in the complaint, the High Court should not hasten to quash criminal proceedings merely on the premise that one or two ingredients have not been stated with the details or that the facts narrated reveal the existence of commercial or money transaction between the parties. The revisional or inherent powers for quashing the proceedings at the initial stage can be exercised only where the allegations made in the complaint or the first information report do not prima facie disclose the commission of an offence or the allegations are so absurd and inherently improper that on that basis no prudent person could have reached a just conclusion that there were sufficient grounds in proceeding against the accused. It is also observed by the Supreme Court that in a criminal court the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a civil court. If the complainant failed to prove the allegations made by him in the complaint, the respondents would be entitled to discharge or acquittal but not otherwise.

6. In the facts of the present case, there is no manner of doubt that specific allegations are made against petitioners Nos.1 and 3 and, upon inquiry ordered by the learned Metropolitan Magistrate, the report would have been made by the I.O. in accordance with law. No process was as yet issued to the petitioners and it is not clear as to why the order of the learned Metropolitan Magistrate has not been allowed to be taken to its logical consequences. In any case, the defence of the petitioners, for whatever it is worth, cannot be considered at this stage for the purpose of quashing the complaint. In this view of the matter and following the principles laid down by the Supreme Court in the aforesaid judgments, the petition has to be rejected. It may be apposite to note at this stage that, without

prejudice to their rights and contentions and without in any way admitting the claim of the complainant, an offer to pay half of the amount claimed was made on behalf of the petitioners in order to finally settle the dispute.

7. In the above facts and circumstances, the petition is partly allowed on the express concession made on behalf of the respondent No.2 and Rule is made absolute to the extent that the complaint registered as Inquiry Case No.21 of 2002 and the order made thereunder are quashed as far as petitioner No.2 is concerned. The prayers in respect of petitioners Nos.1 and 3 are rejected and interim relief is vacated with no order as to costs. The request made at the end of the arguments on behalf of the petitioners to continue for a period of four weeks the injunction granted earlier in this case is also rejected.

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)